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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JIPC Management Inc

Case No. CV08-04310 MMM (PLAx)

Plaintiff,

**EXPERT REPORT OF DR. BRUCE
R. ISAACSON, D.B.A., M.B.A.**

v.

Incredible Pizza Inc and Incredible
Pizza Franchise Group Inc

Defendants.

1 **I. MY PERSONAL QUALIFICATIONS**

2 1. I am the owner and President of Marylander Marketing Research (“MMR”), a marketing
3 research and consulting firm, and am an expert in research, surveys, and marketing.

4 2. For approximately 34 years, my firm, MMR, has provided marketing research and
5 consulting, consisting primarily of the design, execution, and analysis of thousands of surveys, as
6 well as expertise related to marketing and strategy. Our experience includes many surveys used
7 in intellectual property litigation. Our recent clients include well-known organizations, such as:

8 ▪ Hewlett Packard
9 ▪ Blue Cross of California/WellPoint
10 ▪ Islands Restaurants
11 ▪ Several regions of the American Automobile Association
12 ▪ Nestlé USA, Inc.
13 ▪ Smart & Final Stores
14 ▪ Goodyear Tire & Rubber Company

15 3. MMR has specific industry expertise and experience with chain restaurants, who represent
16 an area of focus for our firm. I regularly consult with restaurants, and have spoken at restaurant-
17 industry conferences.

18 4. I received a Bachelor of Science degree in engineering from the Technological Institute at
19 Northwestern University in 1985, and Master of Business Administration and Doctor of Business
20 Administration degrees from the Harvard Graduate School of Business Administration in 1991
21 and 1996. At Harvard, I received my MBA with highest distinction as a Baker Scholar and was a
22 Dean’s Doctoral Fellow, writing 14 publications on marketing and strategy, including best-selling
23 teaching materials. I have taught marketing and strategy for executive groups and executive MBA
24 programs, and my research won awards from institutions including The Institute for the Study of
25 Business Markets at Penn State University, and Harvard University.

26 5. In terms of professional experience, I have been a marketing and strategy consultant at the
27 Boston Consulting Group, Senior Vice President at a publicly traded data processing company
28 called Digital Insight, Division President at a media services company now called Move, and

1 Vice President responsible for marketing and strategy at a national financial services company
2 that was then a division of Cendant Corporation. I also served as the West Coast Practice Leader
3 of Monitor Executive Development, a division of Monitor Group, an international strategy
4 consulting firm, where my responsibilities included developing curriculum and serving as lead
5 faculty for executive education programs in marketing and strategy.

6 6. I am a member of the American Marketing Association and the Marketing Research
7 Association. My firm is a member of the Council of American Survey Research Organizations
8 and the International Trademark Association. I am also on the editorial board of the Journal of
9 Business to Business Marketing. I regularly consult with clients on issues relating to marketing,
10 research, and strategy, and also address associations and groups on the same issues. My public
11 speaking includes addresses to law firms and bar associations on the use of research and surveys
12 in intellectual property litigation. I recently co-authored an article published in the Intellectual
13 Property Law Newsletter of the American Bar Association, Intellectual Property Law Section, on
14 the use of surveys on Intellectual Property research.

15 7. Over my career, I have personally, designed, overseen, and analyzed numerous research
16 studies. I have also provided expertise in marketing, branding and consumer behavior to many
17 clients in a variety of industries on topics such as new products, market and consumer
18 segmentation, and pricing. A copy of my curriculum vitae and litigation expert witness
19 experience is attached as Exhibit 1.

20

21 **II. COMPENSATION**

22 8. I have been retained to perform consulting and expert services for the law firm of Stoel
23 Rives, LLP, attorneys for the plaintiffs JIPC Management Inc. ("JIPC") in this litigation. My
24 compensation is \$450 per hour for consulting and expert services; I also charge for expenses.

25

26 **III. MATERIALS REVIEWED**

27 9. For purposes of this report, I have reviewed materials that include legal documents, such
28 as complaints and motions; relevant websites and online search engine results; displays of

1 retailers/restaurants in relevant product categories; sample marketing materials and other
2 documents provided by the parties during discovery; and published literature and cases relevant to
3 the issues and theories in this matter. I have consulted with colleagues, such as Dr. Jonathan
4 Hibbard, a marketing professor at the Boston University School of Management. In addition, I
5 further rely on my knowledge in the field of marketing, branding, consumer behavior, consumer
6 surveys and market research.

7 10. As I understand it, there are still a significant number and category of document still to be
8 produced by the defendants and third parties, such as CJM Racing. I also understand there is a
9 protective order that the parties have submitted that covers the disclosure of confidential
10 information which cannot be provided at this time. After documents such as these have been
11 produced, I reserve the right to update or supplement my analysis and opinion based on any
12 additional information that is made available to me between now and the time of the trial in this
13 matter.

14

15 **IV. SUMMARY**

16 11. My expert opinion, after reviewing the facts of the case and conducting an analysis of the
17 key marketing elements, is that it is likely that a substantial number of customers and/or potential
18 customers of John's Incredible Pizza Company (JIPC) restaurants could believe that JIPC is the
19 same, connected or affiliated with the restaurant chain America's Incredible Pizza Company
20 (IPC). I conclude that the likelihood of confusion is lower as long as the two companies operate
21 in separate markets, but that two events have made it substantially more likely that IPC will have
22 a presence in markets where previously only JIPC operated.

23 12. First, IPC entered into an agreement with CJM Racing LLC to nationally sponsor the No.
24 11 America's Incredible Pizza Company Racing Chevrolet (now Toyota) and the No. 11 Race
25 Team on the Nascar Nationwide Series; the Nascar Nationwide Series will air advertising and
26 events in California, including within the market of JIPC's restaurants. Second is that IPC is or
27 may be selling franchises within the market area of JIPC's restaurants; as IPC locates franchises
28 in the California market area of JIPC's restaurants, it is likely that a substantial number of

1 customers and/or potential customers could believe that IPC is the same, connected, or affiliated
2 with JIPC.

3 13. I have been asked to provide my opinion and expertise as it relates to the possible
4 likelihood of confusion on the part of customers and potential customers. To develop my
5 conclusions, I have conducted analysis using relevant theories from marketing and consumer
6 behavior. My analysis has focused on items such as the proximity or relatedness of the brands
7 and their offerings; the marks' similarity in appearance, sound, and meaning; the strength of the
8 JIPC and IPC brands among the relevant set of customers; the marketing and advertising channels
9 used to promote the brands; and the degree of care likely to be exercised by consumers.

10 14. To examine these factors and assess their impact on the likelihood of confusion, I have
11 employed several well-known and generally-accepted concepts and theories from marketing. I
12 will explain each of these marketing concepts and theories, and discuss their applications to the
13 issues I have been requested to analyze. These include (a) theories of how brands acquire
14 meaning and value, (b) the concept of target markets, and (c) the marketing mix, which consists
15 of product, price, place, and promotion.

16 15. Brands uniquely identify a firm's market offering to consumers and signal the presence of
17 particular attributes, benefits, and meanings that represent value for the consumer. Brands can
18 also help consumers identify trusted sources of market offerings. Brand differentiation is the
19 extent to which a brand's market impression is unique or "stands out" to consumers in relation to
20 the impressions created by other brands in the product category. When brands are differentiated in
21 consumers' minds, consumers can identify desired products more quickly and accurately. When
22 brand names are undifferentiated, consumers experience difficulty in distinguishing between
23 firms' offerings and are deprived of the right to make efficient and informed decisions.

24 16. A brand's name and/or logo works in conjunction with the efforts of the marketer to
25 imbue the brand with differentiated meaning for the relevant target market of consumers. To
26 understand how brand names and/or logos are connected to brand meaning and differentiation, we
27 must consider several factors which I refer to as brand naming conventions, brand name and/or
28 logo information processing by consumers, and the brand's overall market impression.

1 17. Brand naming conventions: Consumers are exposed each day to thousands of brand names
2 and logos and marketing messages. This exposure leads to knowledge structures regarding brand
3 naming conventions and facilitates identification of varied offerings from a single source or
4 similar offerings from affiliated sources.

5 18. Brand name and/or logo information processing by consumers: There are basic visual and
6 linguistic processing principles that guide consumers' attention and comprehension of
7 information conveyed by brand names and/or logos. This attention and comprehension is done in
8 the context of marketing and advertising activities. Thus, we must consider brand names and/or
9 logos from the consumer's perspective to determine the impression made by these marketing
10 elements.

11 19. The brand's overall market impression: It is also important to consider the overall manner
12 and context in which consumers encounter brands, including visual, aural, and textual information
13 designed by the marketer. Each brand's overall market impression includes the impact of many
14 elements (such as advertising, promotion, store atmosphere, logos, signage, fonts and colors),
15 depending on the marketer's level and types of effort.

16 20. Using a fundamental framework in marketing known as the "marketing mix" or "4P's
17 analysis"¹, I will assess JIPC and IPC to examine the extent to which the resulting marketplace
18 impressions are likely to overlap in consumer's minds. The greater the overlap across the
19 marketing mix elements, the more likely consumers and potential consumers would be to assume
20 that their offerings originate with the same or affiliated sources.

21 21. My report will first discuss brand naming conventions and the manner in which
22 consumers' process brand names and/or logos. I will then explain in detail the marketing mix
23 elements and analysis, using illustrations and examples from JIPC and IPC. Finally, I will
24 conclude with the importance of the JIPC and IPC brand names and the implications of any
25 likelihood of confusion between them.

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27

28 ¹ For example, see Kotler and Keller, Marketing Management, 2006, Prentice Hall.

1 **V. CONSUMER PERCEPTION OF BRAND NAMING CONVENTIONS**

2 22. Assessing the likelihood that consumers will perceive the market impressions created by
3 JIPC and IPC as originating from the same source or affiliated sources requires that we consider
4 how consumers encounter and process conventions in brand naming.

5 23. Many brand naming conventions arise from multiple brand offerings provided by a single
6 company or affiliated companies. Examples include dual branding (such as CARL'S JR./GREEN
7 BURRITO), sub-branding (such as BARILLA RESTAURANT CREATIONS), brand extensions
8 (such as ESPN ZONE RESTAURANT), ingredient branding (such as T.G.I. FRIDAY'S JACK
9 DANIEL'S GRILL), product branding (such as BURGER KING WHOPPER), endorsed
10 branding (such as GENERAL MILLS CHEERIOS), and co-branding (such as D'ANGELO
11 SANDWICH SHOPS AND PAPA GINO'S).

12 24. Brand naming strategies aid consumers in inferring the relatedness of brands or offerings.
13 Brand name relatedness is communicated through a variety of marketing efforts, including the use
14 of common brand name elements and logos, similar trade dress and design, similar or related
15 advertising, promotion of complementary usage, and proximate location². Consumers are
16 accustomed to inferring the relatedness of product offerings and the relatedness of sources of
17 product offerings from the manner in which distinguishing marketing elements such as brand
18 names are constructed.

19 25. For example, in the Riverside, California area consumers can observe different hardware
20 retailers operating under the names ACE HARDWARE, CROWN ACE HARDWARE,
21 BAUMAN'S ACE HARDWARE, and WOODCREST ACE HARDWARE. They can also
22 observe different real estate offices operating under the names DENNIS FRIEDMAN RE/MAX,
23 HECTOR SANCHEZ RE/MAX ADVANTAGE, and RE/MAX ALL STARS REALTY.
24 Applying their general knowledge of "how brand naming works," consumers understand that

26 ² For example, see David A. Aaker and Erich Joachimsthaler (2000), "The Brand Relationship
27 Spectrum: The Key to the Brand Architecture Challenge," California Management Review, 42
28 (Summer), 8–23. Also, see Raj Agopal and Romulo Sanchez (2004), "Conceptual Analysis of
 Brand Architecture and Relationships within Product Categories," Journal of Brand Management,
 11 (February), 232–247.

1 these name variations indicate the same or affiliated sources (i.e., from the larger brands of ACE
2 HARDWARE and RE/MAX).

3 26. In the restaurant category, possessive name forms (e.g., JOHN'S and AMERICA'S)
4 appear frequently in trademarks. In some cases, consumers are only likely to receive an
5 impression of proprietorship, such as when the additional portion of the mark is undifferentiating.
6 For example, JOHN'S RESTAURANT may convey a restaurant operated with a real or fictional
7 proprietor or source or owner of the restaurant. In other cases, consumers are likely to infer
8 proprietorship along with a sense of source identity for the offering, such as when the additional
9 portion of the mark provides differentiating source identity. For example, JOHN'S
10 INCREDIBLE PIZZA CO. suggests to consumers that the source can be thought of as a joint or
11 integrated identity of JOHN'S and INCREDIBLE PIZZA CO.

12 27. This creates at least several avenues for potential confusion when consumers encounter
13 both the JIPC and IPC marks. For example, a consumer who encounters AMERICA'S
14 INCREDIBLE PIZZA COMPANY (or INCREDIBLE PIZZA, INCREDIBLE PIZZA
15 COMPANY, or INCREDIBLE PIZZA.COM as prominently displayed on the sponsored No. 11
16 Race Team in the NASCAR Nationwide Series) in the marketplace may infer that a subsequently
17 encountered JOHN'S INCREDIBLE PIZZA CO. is a franchise or local operation of
18 AMERICA'S INCREDIBLE PIZZA COMPANY or INCREDIBLE PIZZA COMPANY.
19 Similarly, a consumer who initially encounters a JOHN'S INCREDIBLE PIZZA CO. location in
20 the marketplace might reasonably assume or infer that a subsequently encountered AMERICA'S
21 INCREDIBLE PIZZA COMPANY is a modification, extension, or evolution of "JOHN'S
22 INCREDIBLE PIZZA CO." Further, a consumer who is familiar with JOHN'S INCREDIBLE
23 PIZZA CO and who subsequently encounters the NASCAR sponsorship of INCREDIBLE
24 PIZZA COMPANY might reasonably infer the sponsor is affiliated with JOHN'S INCREDIBLE
25 PIZZA CO.

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1 **VI. HOW CONSUMERS FORM BRAND NAME/LOGO IMPRESSIONS**

2 28. Consumers are inundated each day with marketing communications, brand names, brand
3 information, and product images. For many years, researchers in marketing have used
4 sophisticated techniques to examine the factors that determine where consumers focus their visual
5 attention (these are called “fixation points”) and how this attention shifts over time (these are
6 called “gaze paths”) when consumers are exposed to marketing stimuli such as advertisements,
7 commercials, signage, warning labels, and logos.

8 29. Marketers and advertisers use eye tracking technology, as well as other research, as a
9 basis for understanding where consumers focus their attention in a variety of contexts, such as in
10 response to website visits, print advertisements, TV commercials, outdoor billboards and signage,
11 logos, etc.³ The two most consistent findings in this research are as follows. First, consumers
12 typically place attention on the center of a stimulus regardless of the distribution of visual
13 information associated with the stimulus. This predisposition is often referred to as “center bias”
14 or the “center of gravity effect”. Second is that attention is also directed by size and visual
15 contrast⁴. Consumers make visual excursions from the center of a stimulus to process other
16 information which may be relevant due to a connection to attention-grabbing factors, such as
17 visual contrast, or an active goal, such as looking for specific nutrition information on a label.
18 This means that consumers typically do not pay as much attention to tag lines as they pay to the
19 words and text of the logo. Consumers also typically pay less attention to backgrounds, such as
20 the pizza slice in IPC’s logo, or the globe in JIPC’s logo, as these elements do not carry as much
21 salient information.⁵ Based on these findings we can predict the impressions that consumers are
22

23 ³ For example, see Brasel, S. Adam and James Gips (2008), “Breaking Through Fast-Forwarding:
24 Brand Information and Visual Attention,” Journal of Marketing, 72 (6), 31-48.

25 ⁴ For example, see Tatler, B. W. (2007), “The Central Fixation Bias in Scene Viewing: Selecting
26 an Optimal Viewing Position Independently of Motor Biases and Image Feature Distributions,”
27 Journal of Vision, 7 (14), 1-17. Also see Vitu, F., Z. Kapoula, D. Lancelin, and F. Lavigne
28 (2004), “Eye Movements in reading Isolated Words: Evidence for Strong Biases Towards the
center of the Screen,” Vision Research, 44, 321-338

29 ⁵ For example, see Pieters, Rik and Michel Wedel (2007), “Goal Control of Attention to
Advertising: The Yarbus Implication,” Journal of Consumer Research, 34 (2), 224-223,

1 likely to receive from exposure to a given brand name and/or logo, including those at issue in this
2 matter.

3 30. The JIPC Mark: Applying these concepts to the JIPC mark, it is likely that consumers
4 would receive two related impressions during comprehension. One impression is from the center
5 portion of the mark containing the ribbon element with the color-contrasted letters which spell
6 "INCREDIBLE PIZZA CO.", and the other impression is from the somewhat larger and color-
7 contrasted lettering element that spells the possessive name "JOHN'S." The circular globe
8 element stands in the perceptual background of both the "INCREDIBLE PIZZA CO." and
9 "JOHN'S" elements. These impressions are perceptually integrated by their co-presentation and
10 arrangement within a single design and are conceptually integrated by the possessive form
11 "JOHN'S" which takes as its object "INCREDIBLE PIZZA CO." In summary, the JIPC mark
12 makes two distinct but connected and integrated impressions in consumers' minds⁶

13 31. The IPC Mark: A similar analysis of the IPC mark indicates that center bias, color
14 contrast, and size converge to encourage consumers to extract a single element: "INCREDIBLE
15 PIZZA COMPANY." The letters used to spell "AMERICA'S" are in a relatively small font and
16 exhibit limited contrast against the background arch element. In addition to having low perceptual
17 attention-gathering, the AMERICA'S element is unlikely to contribute significant meaning or
18 distinctiveness to the AMERICA'S INCREDIBLE PIZZA COMPANY mark for reasons related
19 to naming principles in natural language. Specifically, researchers who study naming have
20 observed that geographic references in names are often candidates for "clipping", or shortening
21 by omission, in consumer perception and parlance. This phenomenon is especially likely when
22 the first portion of the name is a geographic reference and the remaining portion of the name is
23 distinctive enough to fulfill the naming function⁷. For example, consumers often refer to the LOS
24 ANGELES DODGERS as the DODGERS but do not refer to NEW YORK MAGAZINE as
25 MAGAZINE. Applying this principle to the IPC mark shows that the "AMERICA'S" portion of

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27 ⁶ I realize the logo has also sometimes been used without the ribbon element.
28 ⁷ For example, see Carroll, John M (1983), "Nameheads," Cognitive Science, 7 (2), 121-153.

1 the mark AMERICA'S INCREDIBLE PIZZA COMPANY contributes little distinctiveness to the
2 mark's impression. In fact, IPC uses "AMERICA'S" as only one geographic indicator of many in
3 their brand name and logo. Instead of AMERICA's, they may substitute the name of the city in
4 which the restaurant location operates as its geographic indicator, such as TULSA'S
5 INCREDIBLE PIZZA, MEMPHIS' INCREDIBLE PIZZA, etc. In those and other city locations,
6 the city name is substituted for AMERICA'S in much or all of their branding, such as website,
7 literature, and signage.

8

9 **VII. CREATION AND STRENGTH OF COGNITIVE ASSOCIATIONS BY JIPC AND**
10 **IPC IN CONSUMERS' MINDS**

11 32. Associative network theory is a widely used and accepted model that describes how
12 consumers encode brand names and brand information in memory.⁸ In this model, mental
13 concepts are represented as "nodes" (bits of information) and the type and strength of the
14 cognitive associations between nodes is represented by relationships or "links". For example,
15 nodes comprising a brand concept could include the brand name impressions, product category,
16 attributes, images, and benefits. Associative network theory has been used by marketers for such
17 activities as brand mapping, product positioning, and brand personality research and strategy.

18 33. This model connects current exposure to a brand with long term memory and later recall.
19 Links between nodes are developed through exposure to marketing communications, other
20 consumers, and personal experience. Once formed, links and nodes comprising a consumer's
21 representations remain in long-term memory, where they can be activated and the contents made
22 available in a consumer's working memory. Activation of nodes in the network can result from
23 encounters with external stimuli (such as marketing messages) or from activation spreading out
24 from other linked nodes (such as the consumer thinking about a category or a product).

25 34. The fact that activation spreads from active nodes to linked, inactive nodes provides a
26 mechanism for explaining how certain aspects of a brand can be called to mind by separate but

27 ⁸ For example, see Anderson, John R. (1983), *The Architecture of Cognition*, Cambridge, MA: Harvard University
28 Press. And also see Morrin, Maureen (1999), "The Impact of Brand Extensions on Parent Brand Memory Structures
and Retrieval Processes," *Journal of Marketing Research*, 36 (4), 517-525.

1 related aspects of the brand. For example, to the extent that the JIPC mark and brand involve the
2 distinct and identifying concept of "INCREDIBLE PIZZA CO.," the appearance of marketing
3 materials and images of a race car bearing a prominent sponsor logo spelling "INCREDIBLE
4 PIZZA" is highly likely to evoke the JIPC brand in the minds of relevant customers. The
5 likelihood of a bit of information being called to mind by the activation of another bit of
6 information depends on the strength of the link between the two, with a stronger linkage allowing
7 more activation to occur.

8 35. The strength of links is determined in part by the number of times the link is traversed or
9 activated over time. Thus, the repetition of information that a consumer processes can serve to
10 strengthen the linkage between brand information elements. Another important factor in
11 determining link strength is similarity. The similarity of concepts represented by nodes and
12 linkages is related to the category-based meanings shared by two concepts. Thus, to the extent
13 that JIPC has built a strong and recognizable brand and commercial presence, the previously-
14 mentioned race car with INCREDIBLE PIZZA lettering is all the more likely to evoke the JIPC
15 brand. Also, even when the frequency of link use and the relatedness of concepts are initially low,
16 links can still be established and strengthened by relating new information to information that is
17 already stored in memory.

18 36. This is most likely when information is novel, incomplete, surprising, or interesting. In
19 such cases, more nodes will be activated, and the activation will be sustained and widespread.
20 Thus, there is a greater likelihood of finding and establishing a relationship as linkages are
21 strengthened. Accordingly, to the extent that IPC's marketing activities evoke the JIPC brand
22 through the use of shared and distinctive attributes (e.g., INCREDIBLE PIZZA) while also
23 introducing novel aspects (e.g., sponsoring race cars), it can be said that JIPC loses control of a
24 significant aspect of its brand meaning.

25 37. A marketer works to create and strengthen these cognitive associations to a brand through
26 its strategic use of the marketing mix variables as targeted at a particular set of consumers. In the
27 second half of my report, I will explain and discuss the concepts of marketing mix and target
28 market and explain the types of association which JIPC is seeking to create and strengthen

1 through its marketing activities.

2

3 **I. EXPLANATION OF TARGET MARKET AND THE MARKETING MIX TOOLS**

4 **A. Target Market**

5 38. A widely known fundamental framework in marketing is the "marketing mix," also
6 known as the 4P's⁹. The 4P's are: product, price, place, and promotion. Marketers use the 4P's in
7 conjunction with a specific target marketing of consumers. I will now briefly explain each of
8 these.

9 39. The first concept I have considered is that of a "target market." Because sellers of goods
10 and services cannot satisfy every consumer's needs, they must concentrate their resources and
11 marketing efforts toward a specific group or groups of potential customers: these are called their
12 target markets. Once a target market has been identified, a seller then looks to satisfy the specific
13 needs of that target market by using a combination of four marketing activities commonly called
14 the "marketing mix."

15 **B. Product**

16 40. A product is a good or service offered to satisfy a consumer's or a business's needs. The
17 product has various characteristics, which can include such elements as appearance, functionality,
18 brand name, packaging, and customer service. In the case of IPC and JIPC, the product includes
19 food served as well as games, atmosphere, brand name, and other aspects of the restaurants.

20 **C. Price**

21 41. Price is what the seller charges for the buyer to purchase the product, typically in the form
22 of money spent to purchase an item or service. Price describes not only what the product costs to
23 buy, but also the manner and terms of payment and can also include such payment terms as
24 discounts and promotions.

25 **D. Place**

26 42. Place (also known as distribution) refers to how products are made available to

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28 ⁹ Philip Kotler and Kevin Keller, Marketing Management, 2006, 12th Edition, Prentice Hall.

1 consumers. The concept of place typically includes the location or the place of sale of the
2 product (for example, retail sales, direct marketing, etc.); distribution channel partners, such as
3 wholesalers and retailers; and target market coverage, which relates to how widely the product or
4 service is distributed within the target market. A product distributed in many locations within a
5 target market is said to be distributed widely, while a product distributed in few locations is said
6 to have limited or selective distribution.

7 **E. Promotion**

8 43. Promotion refers to how the chosen target markets are informed or educated about the
9 product. This concept typically includes advertising, selling, promotions, direct marketing, and
10 public relations. Often, the seller will focus promotions on their “unique selling proposition”,
11 which includes those aspects of their product and service which serve to differentiate their
12 offering from competing products. A “unique selling proposition” is often used as the foundation
13 of an advertising campaign, and includes those items that make the seller’s goods and services
14 appealing to customers. While an advertising execution is the specific creative manner in which
15 an advertisement portrays information, the unique selling proposition identifies a reason for the
16 customer to buy a product.

17 44. Overall, marketers determine their marketing mix by managing the activities described by
18 4P’s (product, price, place, and promotion) for each specific set of customers they want to attract
19 to purchase their product or service. A separate marketing mix may be crafted for each product
20 offering and/or for each target market.

21

22 **II. APPLICATION AND ANALYSIS OF TARGET MARKET AND THE**
23 **MARKETING MIX TOOLS FOR JIPC AND IPC**

24 45. In this matter, confusion among customers and potential customers can potentially have
25 several sources. A customer or potential customer may be confused when considering or actually
26 purchasing from JIPC, if the customer incorrectly believes that JIPC is the same company as, or
27 has an affiliation or connection to IPC. Alternatively, a customer or potential customer may be
28 confused when considering purchasing or actually purchasing from IPC if the customer

1 incorrectly believes that IPC is the same company as, or has an affiliation or connection to JIPC.
2 This type of confusion may also arise if a consumer views a NASCAR event, sees the IPC
3 sponsored car with the words INCREDIBLE PIZZA, and incorrectly infers that JIPC is the same
4 company as, or has an affiliation or connection to, IPC.

5 46. The larger the overlap or commonality among these key marketing activities across the
6 two restaurants and their offerings, the more likely it is that a customer or potential customer
7 would be confused as to the affiliation or connection of either restaurant.

8 47. I will now provide an analysis of the target market, applying the marketing mix analysis to
9 JIPC and IPC offerings.

10 **A. Target Market**

11 48. Based on the evidence I have reviewed, JIPC and IPC seek to attract almost identical
12 types of customers to patronize their restaurants. JIPC's product offering is targeted at families
13 and individual consumers who are seeking a moderately priced restaurant and entertainment
14 experience. JIPC targets a variety of age ranges, by including a wide range of food items,
15 (including pizza, pasta, salads, and desserts), operating dining rooms with different themes,
16 offering themes and experiences appropriate for families and individuals, and providing various
17 types of entertainment (such as video games, miniature golf, bumper cars, and go-karts).

18 49. IPC's product offering is also targeted quite broadly at families with children and
19 individuals who seek a moderately priced restaurant and entertainment experience. IPC targets a
20 variety of age ranges, by including a wide range of food items (including pizza, pasta, salads, and
21 desserts), operating dining rooms with different themes, offering themes and experiences
22 appropriate for families and individuals, and providing various types of entertainment and games.

23 50. There is significant potential overlap between the target market profiles of customers and
24 potential customers of both IPC and JIPC. Historically, geography has limited that overlap in
25 practice. JIPC's chain includes eight restaurant locations in California. IPC's chain includes
26 fifteen restaurant locations in the United States, including eight in Texas, three in Missouri, two
27 in Oklahoma, with others in Tennessee and Louisiana.

28 51. As of April 2009, IPC does not yet operate restaurants in California. However, as

1 indicated in court documents, IPC has an agreement as of 2008 with CJM Racing LLC to sponsor
2 nationally the No. 11 America's Incredible Pizza Company Racing Toyota and the No. 11 Race
3 Team on the Nascar Nationwide Series. The Nascar Nationwide Series has been broadcast on
4 television, radio and the Internet, and has broadcast advertisements promoting various events in
5 the California market of JIPC's restaurants. This broadcasting of this sponsorship may have
6 already created potential confusion, as indicated in court documents and in the declaration of John
7 Parlet regarding an email received from John Wyson, dated June 25, 2008.

8 52. For each individual who writes a letter or email asking a question or expressing
9 dissatisfaction, there many others who are also likely to have the same question or dissatisfaction
10 but who have not taken time to communicate. Therefore, there may already be consumers, as
11 well as vendors and potential franchisees, of JIPC who could believe that JIPC is the same,
12 connected or affiliated with IPC.

13 53. Based on court documents, IPC has initiated an effort to sell franchises in the California
14 market. Once IPC starts opening franchises in California, the target market of the two parties will
15 overlap substantially, and in fact be almost identical, and customers and potential customers of
16 each party's product likely to encounter both parties' products.

17 54. Under conditions where IPC franchises start operating in California, it is likely that a
18 substantial number of JIPC customers and/or potential customers could believe that JIPC is the
19 same, connected or affiliated with IPC. In addition, it is also likely that a substantial number of
20 customers and/or potential customers of IPC could believe IPC is same, connected or affiliated
21 with JIPC.

22 **B. Product**

23 55. In this section, I will examine and analyze several key elements of the product and service
24 offering provided by both companies.

25 56. Food: For restaurants, food is the core of what they offer, and typically the most
26 important aspect of their product and service offering. It is the element that attracts customers to
27 the restaurant, and typically would be the first item considered by potential customers in deciding
28 whether to patronize that particular restaurant. The two parties in this matter provide very similar

1 food to consumers. They both operate chains of casual restaurants offering all-you-can-eat
2 buffets featuring pizza, pasta, salad and desserts. Both focus their food items on pizza, and
3 include the term "pizza" in the name of their companies. Both also include, within these
4 categories, a wide range of variety, offering many different types of pizza, different varieties of
5 pasta, salad bars, and a choice of desserts.

6 57. Atmosphere: Atmosphere includes the aspects of a retailer's or location's premises that
7 contribute to its image as perceived by consumers. Aspects of atmosphere can include such
8 elements as decor, architecture and fixtures, layout, lighting, color scheme, noise level, scents,
9 wall coverings, staff demeanor and wardrobe, and special events. After food, atmosphere is an
10 important item considered by customers in selecting a restaurant.

11 58. In terms of atmosphere, the offerings of the two companies are highly similar. Both serve
12 their food in a variety of rooms that have themes or formats. Both operate in the same building as
13 their restaurant, an entertainment complex, and the entertainment activities within that complex
14 have substantial overlap, including activities such as video games, redemption games, skee ball,
15 miniature golf, bumper cars, and go-karts.

16 59. Brand: Brand refers to both the name and the logo of a company, as well as the
17 recognition or image of that name within the target market. Brands can include words, graphics,
18 and other elements. A brand name can be thought of as the mental filing system for customers
19 and potential customers, because it indicates not only the source of certain goods, but also allows
20 the customer to retain in their mind the product attributes that the brand represents.

21 60. There is substantial overlap among the names used by both companies to describe their
22 brand. IPC markets itself under the name "Incredible Pizza Company", while JIPC markets itself
23 under "John's Incredible Pizza Co". Both have slogans that invoke food and fun; JIPC uses the
24 slogan "All You Can Eat Food & Fun" and "Experience the Incredible", while IPC uses "Great
25 Food, Fun, Family & Friends." Both use the word "incredible" throughout their marketing and
26 advertising activities, using the word to describe the food, the gaming experience, and other
27 aspects of visiting their restaurant. For example, marketing materials for JIPC indicate that the
28 restaurant has "Incredible Party Packages", "Incredible Values", "Incredible Food", "Incredible

1 Fun" and even "Incredible Seating". Similarly, marketing materials for IPC use the term
2 "incredible" in formats such as "Incredible Field Trip", "Incredible FUNdraising", and
3 "Incredible Edutainment."

4 61. While the word "incredible" can be read as a superlative or modifier, it can also be
5 perceived by consumers as an unusual one in its manner and frequency of use, and the adoption
6 of this word so extensively by both companies provides another element where customers may be
7 confused as to whether the parties may be same company or, connected or affiliated. Both
8 companies also use names to describe some of their attractions which could draw similar
9 associations among customer or potential customers. For example, JIPC operates a "Speedway"
10 while IPC operates a golf course with a theme of "Route 66."

11 62. Taking all these product-related factors together, the two products have similar product
12 offerings, atmosphere, and brand name. Consequently, if IPC enters JIPC's geographic market
13 area, and if it proceeds to support and manage its product offerings as it has in its other markets,
14 the IPC brand will gain increased awareness among a target market that has substantial overlap
15 with JIPC's. These factors increase the likelihood that a substantial number of customers and
16 potential customers of JIPC believe the two companies are the same, or connected or affiliated.
17 These factors also increase the likelihood that customers and potential customers of IPC believe
18 the two companies are the same, or connected or affiliated with JIPC.

19 C. Price

20 63. As described earlier, price is what the seller charges the buyer to purchase the product,
21 including related elements such as payment terms. The pricing for JIPC's product offerings and
22 IPC product offerings are very similar. Both companies operate moderately-priced dining
23 experiences, with average checks in the range of \$8 to \$12 per person.

24 64. For both companies, the terms associated with these prices are similar, as both companies
25 provide all the food the customer wishes to eat in that visit, in a buffet-style setting, and also
26 include entertainment such as games. Both companies also offer specially-priced packages of
27 food and entertainment for events, including birthday parties, parties for sports teams, or
28 corporate events, and both hold these events in special facilities including dedicated rooms.

1 65. Based on these factors, I conclude that two parties use similar pricing, including both
2 similar price points for similar items and similar terms (both all-you-can-eat and also including
3 some or all games). Because of the substantial overlap in prices and terms, the offerings of both
4 companies would be appealing to similar types of customers on similar types of occasions.
5 Customers and potential customers thinking about a restaurant where they can obtain food such as
6 pizza, pasta, and dessert in a buffet-style setting at inexpensive prices could potentially think of
7 either company and the similarity would make it more difficult to distinguish between the two
8 restaurants. Consequently, the similar price points and terms increase the likelihood that
9 customers and potential customers of the two parties will view the restaurants as the same and/or
10 as connected or affiliated.

11 **D. Place**

12 66. As described earlier, Place includes the distribution and marketing channels through
13 which the two parties deliver their products and services. Based on my analysis, I find that the
14 aspects of place are similar for both companies. In this case, place includes the retail
15 environment operated by each restaurant. As described earlier, both restaurants operate large
16 facilities, typically organized into different rooms, each with a specific theme or atmosphere.
17 Some of those rooms are organized by age group, while others are organized by occasion (such as
18 party or corporate event). Both parties operate restaurants with large areas, in excess of 40,000
19 square feet, and offer both foods and games within that area.

20 67. Regarding aspects of place such as the physical environment or advertising, I find that the
21 aspects are similar between the parties, and that they will be reaching the same target market with
22 these aspects. Therefore, the elements of place also increase the likelihood of confusion between
23 customers and potential customers of both parties.

24 **E. Promotion**

25 68. As described earlier, Promotion includes the means by which the seller tells potential
26 customers about its product and service offering. The aspects of promotion for both companies
27 are consistent with their positioning as moderately priced places for food and entertainment,
28 targeting families, community groups, and individuals.

1 69. Advertising is one of the most important elements of promotion, and I find that both
2 parties have numerous similarities in their advertising activities. While both companies appear to
3 use a variety of media to promote themselves to the relevant target markets, based on information
4 and case documents for which I have had access, both companies appear to rely more heavily on
5 referrals/word of mouth for advertising. Both firms also offer for sale branded apparel and
6 accessories. Both also use marketing to schools, sports teams, and community associations to
7 generate much business. For example, JIPC employs location marketing reps who help each
8 restaurant unit make contacts to the local community. As described earlier, both companies also
9 feature the word "incredible" throughout their advertising activities. Both parties also use the
10 internet and have websites.

11 70. Advertising includes not just the display of the company's message to the relevant
12 consumers, but also the tone or look of the creative execution adopted by the company, both
13 publicly as well as on other documents used within its restaurant, such as menus, signage, and
14 other elements. The two parties have numerous similarities in the look and tone of their creative
15 materials as both have "family-friendly" advertising, often with child-friendly themes and
16 characters.

17 71. Taken in its entirety, for the promotion element of the marketing mix, the manner in
18 which the two companies are promoted to respective target customers is very similar. The unique
19 selling propositions are substantially similar for both restaurant dining and experience, and the
20 advertisements and promotions for the two chains are directed at very similar target audiences
21 with similar needs. In addition, the advertising executions and appeals are also similar. This
22 similarity in promotions will tend to increase the likelihood that customers and potential
23 customers would be confused into thinking that the two restaurants are the same company and/or
24 connected or affiliated¹⁰.

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¹⁰ In fact, based on court documents, it appears that some consumers are confused when they have
28 interacted with the two companies through means such as their websites, believing they are
 interacting with JIPC when they actually contacted JIPC.

1 **III. THE CUSTOMER DECISION-MAKING PROCESS**

2 72. Consumers use different decision-making processes to buy different types of goods and
3 services. For example, the purchase of a soft drink and a house are very different activities, each
4 involving different amounts of money spent, risk to the buyer, locations for purchase, complexity
5 of the item purchased, availability and similarity of goods offered in the marketplace, and length
6 of time for shopping and purchase.

7 73. The purchasing processes that consumers use vary in large part according to the level of
8 consumer involvement in the purchase. Involvement refers to the amount of time and effort a
9 buyer invests in the search, evaluation, and decision-making process. Goods for which consumers
10 have low involvement are afforded relatively little time and effort in search and decision making
11 prior to purchase. These types of goods are often items which are either inexpensive, or for
12 which repetitive purchases over time have made consumers familiar with either the product or the
13 method of purchasing the product.

14 74. In many cases, the JIPC and IPC restaurant offerings could likely be considered low
15 involvement types of purchases for consumers and prospective consumers. In general these
16 products require a low level of consumer involvement and minimal need for any information
17 search before purchase. For example, a consumer driving by either of their locations might see
18 the signage and decide to stop in and eat, without requiring any further research other than
19 observation of the exterior of the restaurant. In this type of purchasing situation, the JIPC or IPC
20 product would be considered an impulse purchase: an unplanned or otherwise spontaneous
21 purchase. The impulse is triggered from seeing the product itself or an advertisement for the
22 product. Most consumers do not spend much time deliberating about impulse purchases. In an
23 impulse purchase situation, consumers come upon a product while shopping or browsing, decide
24 that the product may serve some purpose for them, and are willing to make a purchase of such a
25 product on impulse in large part because of the product's low price. The low price means that
26 purchase of the impulse product poses a low risk of loss to the consumer¹¹.

27 ¹¹ While impulse purchases can sometimes extend to so-called "big ticket" items such as
28 automobiles and home appliances, such impulse purchases of expensive items are much less
 common than impulse purchases of lower-priced items.

1 75. I believe that the purchase behavior for the products and services offered by JIPC and IPC
2 is very similar. JIPC's customers are engaged in either search or impulse behavior: these
3 customers typically experience need recognition and are also exposed to the advertising or
4 location signage. These customers will invest relatively little time and effort in making the
5 purchase decision and will consider few alternatives. This type of impulse purchase behavior is
6 largely driven by the low cost of the product and its easy availability at a nearby location.
7 Because these customers could be making impulse purchases of IPC's product offerings in
8 reaction to seeing a JIPC location or a JIPC advertisement or promotion, if they are also exposed
9 to IPC's product offerings or advertisements they could become confused as to the source,
10 connection or affiliation of the parties' products.

11 76. Therefore, analysis of the purchase behavior for customers and potential customers of
12 JIPC and IPC suggest that purchase processes and patterns may increase the likelihood of
13 confusion in this matter.

14

15 **IV. THE IMPLICATIONS OF CONFUSION BETWEEN BRAND NAMES**

16 77. A brand name is a key determinant of the success of a product in the marketplace. One
17 branding expert, David A. Aaker wrote in a well-known book entitled Managing Brand Equity¹²
18 as follows: "The name is the basic indicator of the brand, the basis for both awareness and
19 communication efforts. Often even more important is the fact that it can generate associations
20 which serve to describe the brand - what it is and does. In other words, the name can actually
21 form the essence of the brand concept."

22 78. Any possible confusion between JIPC and IPC is likely to be very damaging to JIPC for
23 several reasons. First, JIPC has enjoyed some marketplace success in its market of California.
24 However, if IPC does enter or has already entered the California market, JIPC's image and brand
25 equity may be affected by consumer perceptions of IPC, which means that JIPC could lose
26 control of its own brand. That is, the brand equity of JIPC could be determined by the actions of

27
28 ¹² Pages 187-197; Free Press, 1991.

1 another company and the reputation of its products.

2 79. Second, to the extent that JIPC decides to revise its marketing or communications strategy
3 in the future, it may be unable to do so, because its "positioning" and consumer perception may
4 be tied to and influenced by marketing activities of IPC. Third, the impact of confusion is not
5 limited to consumers and potential consumers. For example, suppliers and/or investors could
6 become confused for the same reasoning and logic we have provided for consumer confusion.
7 This could be further damaging to JIPC and its ability to control its brand and identity.

8

9 **V. CONCLUSIONS**

10 80. In conclusion, my analysis shows that both companies have similar target customers, and
11 also use similar elements of the marketing mix to target those customers. Also, the purchase
12 behavior used by customers and potential customers for inexpensive family dining and
13 entertainment does not lead to careful discrimination across providers of these types of services.

14 81. Consequently, my analysis suggests that a substantial percentage of customers are likely
15 to confuse IPC and JIPC, and believe that the two companies are either the same, or share a
16 connection or affiliation

17 82. I further believe that such confusion, if it did exist, would be damaging to JIPC. In the
18 case of confusion, JIPC's brand would become subject to affiliations and associations which they
19 do not control. Further, in that case, the actions of IPC, another company, including the
20 reputation of that company's products and services, would then potentially diminish or
21 change the image or equity of their brand in the mind of their target customers.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is true
2 and correct to the best of my belief.

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4 Executed in Encino, California, on April 10, 2009.

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7 Dr. Bruce R. Isaacson

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EXHIBIT 1
Dr. Bruce Isaacson CV and Testimony Experience



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Research-Based Consulting

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DR. BRUCE R. ISAACSON, DBA, MBA

QUALIFICATIONS

- Expert in marketing, market research, branding, and strategy.
- Experience in research, consulting, and intellectual property matters.
- Doctorate and MBA, Harvard Business School; BS Engineering, Northwestern University Technological Institute.

CURRENT OCCUPATION

Marylander Marketing Research, Encino, CA
PRESIDENT

2005 to Present

MMR provides surveys, analysis, and consulting focused on understanding the attitudes and behaviors of customers and prospective customers. MMR was founded more than 30 years ago and helps clients to attract and retain customers, manage and grow brands, launch and improve products, and support intellectual property litigation.

- **Manage research-based consulting firm**
President of research firm, responsible for firm strategy, client projects, and overall business.
- **Manage clients and projects**
Design studies, manage research, and present findings for clients in practice areas including consumer goods and services, restaurant/retail, litigation, technology, health care, and other industries. Studies focus on topics in marketing, research, and strategy. Regularly provide research, declarations, and expert witness services for intellectual property litigation.
- **Develop MMR's intellectual property**
Develop and manage MMR's research and analysis capabilities. Develop new products, serve as frequent speaker at conferences, seminars, and meetings on topics relating to marketing, research, and strategy.

EDUCATION

- Doctor of Business Administration/Marketing, **Harvard Business School**, 1995.
- MBA with High Distinction, **Harvard Business School**, 1991. Graduated in top 5% of class as a Baker Scholar.
- Bachelor of Science in Engineering with focus on Regional Development, **Northwestern University Technological Institute**, 1985.

PRIOR PROFESSIONAL EXPERIENCE

Fairview Company, Calabasas, CA
MANAGING DIRECTOR

2002 to 2004

- **West Coast Practice Leader of Executive Development for Monitor Group.**
Designed and managed marketing and strategy executive education programs for clients of an international consulting firm. Developed curriculum, served as lead faculty on programs for Fortune 100 clients in industries including consumer products, biotechnology and technology.
- **Consulted with clients in technology, software, and financial services.**
Provided consulting services in marketing and strategy. Also provided services related to mergers and acquisitions – researching sectors, raising capital, and negotiating offers with target companies.

Intuit/Digital Insight, Calabasas, CA

2001 to 2002

SENIOR VICE PRESIDENT FOR PRODUCTS, MARKETING, AND ALLIANCES

- **Managed business line for \$130 million provider of outsourced banking services and software.**
Directed marketing, strategy, alliances, mergers, acquisitions, resellers, and pricing for 9 business lines. Managed \$29 million budget and staff of 40. Contributed to 38% revenue growth to \$130 million in 2002.
- **Transformed technical product group into revenue-focused organization.**
Created and managed 7 cross-functional teams for key initiatives with \$5 million in potential revenues. Developed programs for client base of 1,600 banks and credit unions.
- **Built product management and strategy functions.**
Set priorities for \$22 million R&D budget, pared down 370 projects to focus on high return categories. Directed \$51 million acquisition and post-merger conversion of 150 new clients.

Move, Inc. (NASDAQ: MOVE) Westlake Village, CA
PRESIDENT, HOME SERVICES

1999 to 2001

- **Founded home services division for \$320 million software/services provider to real estate industry.**
Directed business unit for new division as one of 5 division presidents reporting to firm President.
- **Started and managed division focused on the home improvement industry.**
Created business plan, recruited team, developed products, launched marketing and sales programs. Negotiated alliances with National Association of Homebuilders, American Institute of Architects. Built services directory of 300,000 providers in 28 categories. Launched 3 product lines, grew to 600 clients.

PHH Corporation (NYSE: PHH), Mortgage Division, Mount Laurel, NJ
VICE PRESIDENT, MARKETING

1997 to 1999

- **Directed marketing for \$26 billion outsourced mortgage services division.**
Company provided private label loans and loan servicing for customers and partners, including Merrill Lynch, Wells Fargo, USAA, Coldwell Banker, Century 21. Served on 14-member Executive Committee. Managed \$14 million budget and 60 people in marketing, research, public relations, advertising, strategic planning, business development and e-commerce.

- **Created collateral for selling, processing, and closing loans distributed to 750,000 customers annually.**
Redesigned sales materials used by 150-person sales force. Created point-of-sale materials and placed in 1,600 real estate offices nationwide. Negotiated co-marketing deals with software, real estate, financial service companies.
- **Built the company's first online platform to originate, close and service mortgages online.**
Created co-branded system used by 1,400 partners to originate \$700 million in mortgages in 2000. Developed complete technology solution interfacing with 3 major legacy computer systems. Integrated with over 2,000 sales and customer service reps.

Boston Consulting Group, Chicago, IL
CONSULTANT

1995 to 1997

- **Consulted in marketing, strategy and distribution for \$1 billion international strategy consulting firm.**
Designed and rolled out database marketing program including frequent shopper card for international supermarket chain.
Developed global purchasing strategy across 14 business units and 8 plants for \$3 billion consumer goods company.
Evaluated market strategy for \$800 million division of paper goods company.

Harvard Business School, Cambridge, MA
DEAN'S DOCTORAL FELLOW

1991 to 1995

- **Developed and implemented multi-year research project analyzing buyer-supplier alliances.**
Authored 14 publications including best-selling case studies and articles in distribution, sales, supplier management, purchasing, branding, new products. Taught in Babson College Executive MBA program.

E&J Gallo Winery, Modesto, CA
MBA INTERN

1990

- Summer intern at global winery. Developed packaging strategy, distribution and retailer incentive programs for the wine cooler category.

Long Wharf Trading Company, Danvers, MA
PRESIDENT & CO-FOUNDER

1986 to 1989

- **Co-founded company manufacturing high quality sewn products for advertising premiums.**
Directed 30 employees. Clients included banks, universities, corporations, schools and museums. Company was featured with full-page story in *Inc. Magazine* for innovative strategy.

Parsons Corporation/Barton-Aschman Associates, Evanston, IL
ASSOCIATE CONSULTANT

1985 to 1986

- **Conducted strategic and operations planning for public transportation systems at global construction and regional planning company.**
Received *President's Award* for outstanding initiative and performance.

HONORS, APPOINTMENTS, AFFILIATIONS

- Member, American Marketing Association (AMA)
- Member, Counsel of American Survey Research Organizations (CASRO)
- Member, International Trademark Association (INTA)
- Member, Marketing Research Association (MRA)

- Editorial Board, *Journal of Business-to-Business Marketing*, 1994 - present
- Policy Advisory Board, Joint Center for Housing Studies at Harvard University, 1999 - 2001
- Winner, Doctoral Dissertation, Institute for Study of Business Markets, Penn State, 1994
- George S. Dively Award for Innovative Research, Harvard Business School, 1993
- George F. Baker Scholar, Harvard Business School (top 5% of class), 1991
- Dean's Doctoral Fellowship, Harvard Business School, 1993 -1995

SELECTED SPEAKING ENGAGEMENTS

Frequent speaker at industry conferences and client events on topics relating to marketing and strategy, including:

- "What Can We Learn from Customer Satisfaction Studies?" Real Trends Marketing & Technology Expo, September 2006.
- "Understanding Today's Customers and Making Tough Choices – Lessons Learned From Starbucks," Western Foodservice & Hospitality Expo, August 2007.
- "Measuring Consumer Attitudes and Behaviors in Intellectual Property Litigation," Continuing Legal Education (CLE) seminar presented to audiences including:
 - Orange County Bar Association, November 2007.
 - Baker Botts, LLP, March, 2008.
 - Amster, Rothstein & Ebenstein LLP, March, 2008.
 - Fulwider Patton, LLP, March, 2008.
- "Understanding Your Customer and Making Tough Strategic Choices," International Restaurant & Foodservice Show of New York, March, 2008.
- "The Death of the Focus Group: Non-Traditional Research to Create Deeper Customer Insight." Presentation to American Marketing Association Annual Marketing Research Conference, September, 2008.

PUBLICATIONS

Why Online Consumer Surveys Can Be a Smart Choice in Intellectual Property Cases (with Dr. Jonathan Hibbard and Dr. Scott Swain). *Intellectual Property Law Newsletter of the American Bar Association, Intellectual Property Law Section*, May 2008.

Bose Corporation: The JIT II Program (A), (B), (C), and (D) (with Professor Roy Shapiro). *Harvard Business School cases 9-694-001, -002, -003, and -004*.

Bose Corporation: The JIT II Program Teaching Note. Harvard Business School teaching note 5-695-017.

Buyer-Supplier Relationships: Antecedents, Management and Consequences. Harvard Business School doctoral dissertation, 1996.

Goodyear: The Aquatred Launch (with Professor John Quelch). Harvard Business School case 9-594-106. *Best seller*.

Goodyear: The Aquatred Launch Teaching Note (with Professor John Quelch). Harvard Business School teaching note 5-595-016.

Industrial Marketing (with Professor V. Kasturi Rangan). In *AMA Management Handbook, Third Edition*, edited by John J. Hampton. New York: Amacom Books, 1994, pp. 2-101 to 2-108.

Managing Buyer-Supplier Relationships. Preface to *JIT II: Revolution in Buying and Selling*, edited by Lance Dixon and Anne Millen Porter. Newton, MA: Cahners Publications, Inc., 1994

Philip Morris: Marlboro Friday (A) and (B). Harvard Business School case 9-596-001 and -002.

Scope and Challenge of Business-to-Business Marketing (with V. Kasturi Rangan). Harvard Business School class note 9-594-125.

Vistakon: 1 Day Acuvue Disposable Contact Lenses (with Alvin J. Silk and Marie Bell). Harvard Business School case 9-596-087.

What is Industrial Marketing? (with Professor V. Kasturi Rangan). Harvard Business School class note 9-592-012.



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Dr. Bruce Isaacson
Litigation Expert Witness Experience

January, 2009

Cases in which Dr. Bruce Isaacson has testified as an expert at trial, including written expert reports submitted to the court or by deposition in the past four years.

Richard Dominquez et al v. UAL Corporation
U.S. District Court, District of Columbia

James and Mary Jordan et al v. The Scott Fetzer Company
U.S. District Court, Middle District of Georgia

Quicksilver, Inc. v. Tween Brands, Inc.
U.S. District Court, Eastern District of Virginia

Natural Balance Pet Foods v. Royal Canin USA
U.S. District Court, Central District of California

Tokidoki, LLC v. Fortune Dynamic Inc.
U.S. District Court, Central District of California

Luppen Holdings v. Pitney Bowes
U.S. District Court, Central District of California

American Healthcare Products, Inc. v. Great American Marketing, Inc. and Great American Manufacturing, Inc.
U.S. District Court, Central District of California